INDEX

	Page
Opinion below	1
Jurisdiction	1
Question presented	2
Statutes involved	2
Statement	3
Argument	4
Conclusion	8

CITATIONS

Cases:

Cameron v. *United States*, 252 U.S. 450	4, 5
Catholic Bishop of Nesqually v. *Gibbon*, 158 U.S. 155	5
Farmer's Loan & Trust Co. v. *Lake Street Elevated R. R. Co.*, 177 U.S. 51	6
Gauthier v. *Morrison*, 232 U.S. 452	6
Harkrader v. *Wadley*, 172 U.S. 148	6
Humboldt Placer Mining Co. v. *Best*, 293 F. 2d 553	7
Last Chance Mining Co. v. *Tyler Mining Co.*, 157 U.S. 683	6
Leiter Minerals, Inc. v. *United States*, 352 U.S. 220	6
Minnesota v. *United States*, 305 U.S. 382	5
Potter v. *Randolph*, 126 Cal. 458, 58 Pac. 905	5
Steel v. *St. Louis Smelting Co.*, 106 U.S. 447	5
Wilbur v. *United States*, 280 U.S. 306	7

Statutes:

28 U.S.C. 690, 1946 ed.	5
R.S., section 441, as amended, 5 U.S.C. 485	2, 4
R.S. 910, 30 U.S.C. 53	2; 5
R.S. 2319, as amended, 30 U.S.C. 22	4
R.S. 2322, 30 U.S.C. 26	4
R.S. 2325, as amended, 30 U.S.C. 29	4

In the Supreme Court of the United States

OCTOBER TERM, 1961

No. 349

JAMES DUGUID and BERTHA V. DUGUID,
PETITIONERS

v.

RAYMOND R. BEST, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE RESPONDENTS IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals (Pet. App. A, 12-23) is reported at 291 F.2d 235.

JURISDICTION

The judgment of the court of appeals was entered on May 25, 1961. A timely petition for rehearing was denied on June 15, 1961. The petition for a writ of certiorari was filed on August 23, 1961. The

jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the Secretary of the Interior has authority to complete an administrative proceeding to determine whether the petitioners had established a valid mining claim against the United States on public land, notwithstanding the fact that they had previously instituted a possessory action in a state court against a competing interest in the same land.

STATUTES INVOLVED

Revised Statutes, section 441, as amended, 5 U.S.C. 485, provides in pertinent part as follows:

> The Secretary of the Interior is charged with the supervision of public business relating to the following subjects and agencies:
>
> * * * * *
>
> 4. Bureau of Land Management.
>
> * * * * *
>
> 13. Public lands, including mines.

Revised Statutes, section 910, as amended, 30 U.S.C. 53, provides:

> No possessory action between persons, in any court of the United States, for the recovery of any mining title, or for damages to any such title, shall be affected by the fact that the paramount title to the land in which such mines lie is in the United States; but each case shall be adjudged by the law of possession.

STATEMENT

This action was brought in federal district court to enjoin the respondents, who are subordinate officials of the Department of the Interior, from conducting an administrative proceeding. The proceeding, referred to as a "contest," was to determine the validity of petitioners' mining claim on public land in Lassen National Forest, California.

The petitioners alleged in the district court that they are the owners of a mining claim located in 1936 and duly recorded in the records of Butte County, California. The mining location is alleged to contain a valuable deposit of gold-bearing gravel. In March 1956, Paradise Irrigation District was granted a special use permit by the United States, "subject to all valid claims," to construct a dam and spillway at specified locations in Lassen National Forest. A portion of the irrigation district construction covered an area claimed by the petitioners in their mining location (Pet. 3).

The petitioners instituted an action against the irrigation district in the Superior Court of the State of California in May 1959, asking $30,000 damages as the value of th land "seized, taken and possessed" by the irrigation district (Pet. App. F, p. 38). In February 1960, the irrigation district filed in the Bureau of Land Management, Department of the Interior, at Sacramento, California, a complaint seeking an administrative determination of the validity of the petitioners' mining claims. In March 1960, the petitioners instituted this action against

local officials of the Department of the Interior in the district court to enjoin the administrative contest.

The district court granted the respondents' motion for summary judgment and held that the Bureau of Land Management was acting within its authority in proceeding to conduct the private contest instituted before it by the irrigation district. The court of appeals affirmed, holding that the validity of the mining claim was not at issue in this case, and that the Bureau of Land Management had authority to hear and determine its validity as against the United States whether it did so at the instigation of a private party or on its own initiative. In a dictum, the court of appeals stated "that it is not improper for state courts to make such a determination [of whether there had been a valid mineral discovery] but such determination affects only the possessory interests of the litigants and has no effect upon the paramount title of the government." (Pet. App. A, p. 18).

ARGUMENT

1. The purpose of the administrative contest was to determine whether the claimants, the petitioners here, had made a valid mineral discovery on the public lands such as would give the claimants the exclusive right of possession or the right to a patent. R.S. 441, as amended, 5 U.S.C. 485; *Cameron* v. *United States*, 252 U.S. 450; see also R.S. 2322, 30 U.S. 26; R.S. 2319, as amended, 30 U.S.C. 22; R.S. 2325, as amended, 30 U.S.C. 29. The Department of the

Interior is the proper tribunal to determine whether there has been a valid mineral discovery and whether there has been the requisite compliance with the mining laws of the United States. *Cameron* v. *United States*, *supra*; *Catholic Bishop of Nesqually* v. *Gibbon*, 158 U.S. 155, 166-167; *Steel* v. *St. Louis Smelting Co.*, 106 U.S. 447, 450-451.

Assuming, *arguendo*, that it was appropriate for the petitioners to bring their action for damages under R.S. 910, 30 U.S.C. 53, in a state court,[1] the pendency of the suit over rights of possession between individuals does not preclude the Department of the Interior from determining whether a mining claimant has made a valid mineral discovery and complied with the mining laws sufficiently to give the claimant a right in public lands against the United States. The California courts take the view that suits in state courts over possessory rights between private litigants in no manner interfere with subsequent determination by the Department of the Interior as to which of the litigants is entitled to receive title to the land from the United States. See *Potter* v. *Randolph*, 126 Cal. 458, 58 Pac. 905. Indeed, if the private litigation were construed to affect the title of the United States, the suit would be beyond the

[1] Although we have found no cases so stating, it is arguable that "any court of the United States" used in R.S. 910, 30 U.S.C. 53, refers to federal courts. Cf. *Minnesota* v. *United States*, 305 U.S. 382, 389. The section was originally contained in that chapter of the Revised Statutes dealing with evidence in federal courts. It was codified until recently in Title 28, United States Code. (See 28 U.S.C. 690, 1946 ed.)

jurisdiction of the state courts. *Leiter Minerals, Inc.* v. *United States*, 352 U.S. 220, 226.

None of the cases on which petitioners rely involves the authority of the Department of the Interior to determine the validity, as against the United States, of a mining claim or other interest in the public domain. *Gauthier* v. *Morrison*, 232 U.S. 452, recognizes the distinction between the right of private parties to litigate for possession in the state courts and the functions of the Secretary to administer the public land laws. The Court specifically noted that "no interference with [the Land Department] or usurpation of its functions was here sought or involved." (232 U.S. at p. 461.) *Last Chance Mining Co.* v. *Tyler Mining Co.*, 157 U.S. 683, is concerned with the question of whether there was estoppel by judgment from a prior judgment in a state court action authorized by federal statute which would prevent a relitigation of the same question in a later suit in federal court. Again the Court recognizes the difference between private litigation and litigation between a claimant and the federal government. Of the latter the Court said (157 U.S. at p. 694): "There is no provision in the statute for an action of this kind simply against the government. An applicant for public lands cannot have his right thereto as against the government determined by the courts in a suit against the latter." Neither *Hawkrader* v. *Wadley*, 172 U.S. 148, nor *Farmers' Loan & Trust Co.* v. *Lake Street Elevated R. R. Co.*, 177 U.S. 51, involves public lands or the Department of the Interior. The language quoted

by petitioners (Pet. 7) from *Wilbur* v. *United States*, 280 U.S. 306, 316, is not in point, because it related to land that contained valuable mineral deposits. Here, however, the purpose of the administrative contest is to determine precisely that issue, *i.e.*, whether this land contains such deposits.

In summary, the litigation in the state court does not affect and could not be *res judicata* on the issues before the Department of the Interior. The Ninth Circuit has correctly held that the Department of the Interior, and respondents as officers thereof, have authority to hear and determine the administrative proceedings initiated by the irrigation district. It is, therefore, no basis for enjoining respondents from continuing with these proceedings that an action over possessory rights is pending in the state court.

2. While we thus believe that the decision below in this case is correct, we invite the Court's attention to the subsequent decision of the Ninth Circuit in *Humboldt Placer Mining Co.* v. *Best*, 293 F. 2d 553. In the *Humboldt* case, the court below held that the filing of an action by the United States to condemn public lands, in which mineral claims were asserted, barred the Secretary of the Interior from conducting an administrative proceeding, instituted after the condemnation suit had been filed, to determine the validity of such claims. The government will file a petition for certiorari in the *Humboldt* case.

The decision in *Humboldt* may be distinguished on the ground that there the judicial and administrative proceedings both involved the federal government, whereas in the present case the judicial proceedings

involve only private parties. Moreover, the United States had no connection with the institution of the judicial proceedings in *Humboldt*, whereas here it filed the condemnation suit. In view of the related issues involved in the two cases, however, the Court may deem it appropriate to defer ruling upon the present petition until it considers the petition in *Humboldt*.

CONCLUSION

The petition for a writ of certiorari should be denied; the Court, however, may wish to defer ruling on it until it considers the petition to be filed in the *Humboldt* case.

ARCHIBALD COX,
Solicitor General.

ROGER P. MARQUIS,
A. DONALD MILEUR,
Attorneys.

NOVEMBER, 1961

U. S. GOVERNMENT PRINTING OFFICE: 1961 O—585519